

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2651**

**PETITION OF BRENNEMAN AND PAGENSTECHER, INC.**

**ERRATA STATEMENT**

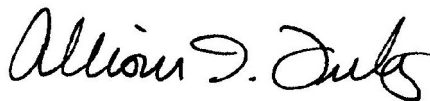
The Board of Appeals Opinion, for the above-captioned case, dated June 22, 2007, contained inadvertent errors that need to be corrected. This errata statement is incorporated into the Opinion and reflects the following corrections and clarifications:

On page 2, in the first, full paragraph the third sentence should read:

"After careful consideration and review of the record, the Board adopts the Hearing Examiner's Report and Recommendation and grants the special exception and parking waivers subject to the following conditions, with additional conditions inserted as Conditions Nos. 14 and 16, and the requirement in Condition No. 7 that the Board receive a copy of the Tree Save Plan:"

Condition No. 16 should read:

"The Special Exception Holder shall inform the Board of the issuance date for its Certificate for Use and Occupancy for the special exception. The Board will hold a review hearing on the special exception within one year of that date. The Board hereby reserves the right to revise the terms and conditions of approval of the special exception if it finds that the review hearing reveals violations of the special exception."



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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2<sup>nd</sup> day of July, 2007.

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Katherine Freeman  
Executive Director

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**PETITION OF BRENNEMAN AND PAGENSTECHER, INC.**

OPINION OF THE BOARD

(Opinion Adopted June 13, 2007)  
(Effective Date of Opinion: June 22, 2007)

Case No. S-2651 is an application, pursuant to Section 59-G-2.38 of the Zoning Ordinance, to permit a non-resident professional office (architects). The petition also requests waivers from a number of parking regulations pursuant to Section 59-E-4.5

The subject property is Lot 32, Block 2, Glen Echo Heights Subdivision, located at 7025 Mac Arthur Boulevard, Bethesda, Maryland, 20816, in the R-90 Zone.

The Hearing Examiner for Montgomery County held a public hearing on the application on November 4, 2005, April 10, 2006, May 12, 2006, May 19, 2006 and November 17, 2006, closed the record in the case on April 6, 2007, and on May 7, 2007 issued a Report and Recommendation for approval of the special exception.

Decision of the Board:                      Special Exception **Granted** Subject to  
Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on June 13, 2007, and thanks the Hearing Examiner for a thorough and thoughtful analysis of complex legal questions and a voluminous factual record. The Board also had before it a request for Oral Argument from Norman G. Knopf, Esquire, on behalf of Norma Danis Spiegel, Ronald Nessen and John Juenemann. Jody S. Kline, Esquire filed a request, in the event that the Board granted Oral Argument, to present argument on the subject of Condition No. 12 in the Hearing Examiner's Report and Recommendation.

The Board believes that the Hearing Examiner has thoroughly analyzed the facts and legal issues in the case and that the parties have vigorously argued their positions. The

Board finds therefore that it does not need further argument to inform its decision and that the requests for oral argument should be denied. After careful consideration and review of the record, the Board adopts the Hearing Examiner's Report and Recommendation and grants the special exception and parking waivers subject to the following conditions, with an additional condition inserted at No. 14, and the requirement in Condition No. 7 that the Board receive a copy of the Tree Save Plan:

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report and in the opinion of the Board.
2. Petitioner shall limit parking spaces on site to eight, and these spaces must be screened as shown on the revised Landscape Plan (Exhibit 127(b)). Parking on the site shall be conducted in accordance with the Consolidated Statement of Operations (Exhibit 166).
3. Petitioner shall limit the use to seven (7) employees stationed on the subject site.
4. Primary hours of business operation shall be from 7:00 a.m. to 5:30 p.m. daily, Monday through Friday. Extended Visitor hours until 7:00 p.m., Tuesday and Thursday evenings. Visitor and Staff Flex hours are permitted as noted below:
  - a. Visitors
    - I. No clients or other visitors allowed on weekends, or at any other time outside of Primary and Extended Visitor hours.
    - II. Client visits limited to five (5) per week. Client visits to be logged and reserved for DPS inspection purposes.
    - III. No company trucks or vans allowed visiting outside of the primary business hours (7:00 a.m. to 5:30 p.m. daily).
    - IV. No construction materials allowed to be delivered, received or stored at any time.
  - b. Staff Flex hours
    - I. Two (2) staff members, maximum, present between the hours of 5:30 a.m. to 7:00 a.m., Monday through Friday.
    - II. Four (4) staff members, maximum, present between the hours of 5:30 p.m. to 7:00 p.m., Monday through Friday.
    - III. Two (2) staff members, maximum, present between the hours of 7:00 p.m. to 9:00 p.m., Monday through Friday.
    - IV. Two (2) staff members, maximum, present between the hours of 10:00 a.m. to 4:00 p.m., Saturday and Sunday.
    - V. No staff members allowed at any other time outside of Primary and Flex Staff hours.

5. Parking area landscape screening must be maintained. Hedges located along Walhonding Road must be maintained at a height of 3 feet to 3½ feet to avoid interference with the line of sight of motorists exiting the site's driveway. In the event that landscape screening is removed from an adjacent property, that when in place effectively screened the petitioner's parking area, screening must be replaced on the petitioner's property by modification to the approved special exception.
6. Because the subject site has been designated in the Master Plan for Historic Preservation, approval of the Historic Preservation Commission and issuance of an Historic Area Work Permit must be obtained before any exterior changes to the site may be made.
7. Petitioner must prepare a Tree Save Plan and submit it to M-NCPPC Environmental Planning staff prior to issuance of sediment and erosion control permits. This plan must be prepared by an ISA certified arborist and demonstrate full compliance with the requirements of Forest Conservation Law Section 22A-12. The Plan shall make every effort to preserve two-thirds of the critical root zone of the 36" caliper Sycamore tree. A copy of this plan shall be submitted to the Board of Appeals.
8. Petitioner shall limit the site's office, professional nonresidential, floor space, as defined in Zoning Ordinance §59-E-3.7, to 2,802 square feet. Petitioner shall provide 8 parking spaces on site, including 1 handicapped accessible space, with appropriate signage, and 1 visitor- priority space, with a sign so designating.
9. If there is any event which would require parking in excess of that provided in the on-site facility, Petitioner shall make a specific arrangement to handle it as provided in the Parking Management Plan contained in the Consolidated Statement of Operations.
10. Petitioner is prohibited from using the public parking lot on the west side of MacArthur Boulevard, directly across from the Sycamore Store, for employees or construction contractors at any time and for visitors on weekends. It may be used for occasional weekday visitors, as long as the County chooses not to post signs prohibiting the lot's use in this fashion. "Occasional" for this purpose means no more than one or two cars, once or twice a week.
11. Petitioner is prohibited from bringing construction equipment and heavy trucks into the on-site parking facility or on Walhonding Road or in the public lot across MacArthur Boulevard at any time once Petitioner's office is operational; however, such equipment may be brought on site to complete the renovation of the Sycamore Store and the site.
12. The non-architectural part of Petitioner's firm (*i.e.*, the building contractor business) may not operate out of the Sycamore store. Peter Pagenstecher or his

successor may have an office in the Sycamore Store solely to conduct his overall management role for the firm, but he may not conduct his building contractor business there. The administrative employees of the firm may conduct their activities, which are ancillary to that which would be expected in an architectural office, at the Sycamore Store, even though those activities may be interwoven with some administration of the builder function.

13. Petitioner may repair the existing Sycamore Store sign and may post a sign identifying the professional office after it obtains a permit therefore pursuant to Code §59-F-9.1(a). The office sign should not exceed two square feet, and a copy of the permit should be filed with the Board of Appeals. Consistent with Condition 12, the sign should not identify the firm as a “builder,” “construction contractor,” or the like.<sup>1</sup>
14. The special exception site shall not be used to host the weekly company lunch.
15. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Donna L. Barron, Vice-Chair, seconded by Catherine G. Titus, with Caryn L. Hines, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

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<sup>1</sup> Petitioner has previously posted signs identifying itself as “Brenneman and Pagenstecher, Residential Architects & Builders.” See Exhibit 107. Any sign posted on the subject site should not contain any reference to “Builders.”

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 22<sup>nd</sup> day of June, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.